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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GABRIEL A. COHEN

Appeal 2009-002079
Application 10/686,487¹
Technology Center 2100

Decided: January 6, 2010

Before ST. JOHN COURTENAY III, THU A. DANG, and JAMES R.
HUGHES, *Administrative Patent Judges*.

HUGHES, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Application filed October 15, 2003. The real party in interest is IBM Corp.
(App. Br. 1.)

STATEMENT OF THE CASE

The Appellant appeals the Examiner's rejection of claims 1-16 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

Appellant's Invention

Appellant invented a system, apparatus, and method for rendering a portal user interface responsive to user interaction with portlets of the interface and changes in portlet focus. (Spec. 1, ll. 5-6; 4, ll. 2-19.)²

Representative Claim

Independent claim 1 further illustrates the invention. It reads as follows:

1. A method for indicating input focus in a portal environment, the method comprising the steps of:
 - assigning an unfocused style to all unfocused portlets in a portal except for a focused portlet having input focus;
 - further assigning a focused style to said focused portlet having input focus;
 - rendering said focused and unfocused portlets in said portal; and,
 - responsive to a new portlet in said portal acquiring said input focus from said focused portlet, re-assigning said focused style to said new portlet while re-assigning said unfocused style to said focused portlet which no longer has input focus, and re-

² We refer to Appellant's Specification ("Spec."); Appeal Brief ("App. Br.") filed October 2, 2007; and Reply Brief ("Reply Br.") filed June 16, 2008. We also refer to the Examiner's Answer ("Ans.") mailed April 14, 2008.

rendering said new portlet and said focused portlet which no longer has input focus in said portal according to said styles.

References

The Examiner relies on the following reference as evidence of unpatentability:

Gajewska	US 2002/0175951 A1	Nov. 28, 2002
Ito	US 2003/0084405 A1	May 1, 2003
Griffin	US 2003/0126558 A1	Jul. 3, 2003
Fukuda	US 2004/0107449 A1	June 3, 2004 (Filed Oct. 7, 2003)
Martin	US 7,174,512 B2	Feb. 6, 2007 (Filed Nov. 28, 2001)

Rejections

The Examiner rejects claim 1 under 35 U.S.C. § 102(e) as anticipated by Martin.

The Examiner rejects claim 12 under 35 U.S.C. § 102(e) as anticipated by Fukuda.

The Examiner rejects claim 2 under 35 U.S.C. § 103(a) as obvious in view of Martin and Gajewska.

The Examiner rejects claims 6, 7, 10, 11, and 13 under 35 U.S.C. § 103(a) as obvious in view of Fukuda and Gajewska.³

³ We note that the Examiner rejects independent claim 6 in view of the Fukuda and Gajewska references and dependent claim 8 in view of the

The Examiner rejects claims 3 and 5 under 35 U.S.C. § 103(a) as obvious in view of Martin, Gajewska, and Ito.

The Examiner rejects claims 9, 14, and 16 under 35 U.S.C. § 103(a) as obvious in view of Fukuda, Gajewska, and Ito.⁴

The Examiner rejects claim 4 under 35 U.S.C. § 103(a) as obvious in view of Martin, Gajewska, Ito, and Griffin.

The Examiner rejects claims 8 and 15 under 35 U.S.C. § 103(a) as obvious in view of Fukuda, Gajewska, Ito, and Griffin.

Claim Groupings

Based on Appellant's arguments in the Appeal Brief and Reply Brief, we find the following claim groupings. Appellant argues independent claim 1 with respect to the § 102(e) rejection. (App. Br. 4-8.) Appellant argues

Fukuda, Gajewska, Ito, and Griffin references. The Examiner groups dependent claims 10 and 11 with claim 6, rejecting these claims in view of Fukuda and Gajewska even though these claims depend upon claim 8 (and claim 9), which stands rejected over Fukuda, Gajewska, Ito, and Griffin. Thus, it appears that the Examiner erred in grouping the rejected claims. Appellant does not object to the rejection of these claims as improper, and we interpret the Examiner's rejection as rejecting the dependent claims over each of the references cited with respect to the base claims. Accordingly, we view the Examiner's mistake as harmless error.

⁴ See note 3, *supra*. We note that the Examiner rejects claim 9 in view of Fukuda, Gajewska, and Ito, even though this claim depends upon claim 8, which stands rejected over Fukuda, Gajewska, Ito, and Griffin. Thus, it appears that the Examiner erred in grouping the rejected claims. Appellant does not object to the rejection of this claim as improper, and we interpret the Examiner's rejection as rejecting the dependent claim over each of the references cited with respect to the base claim. Accordingly, we view the Examiner's mistake as harmless error.

independent claim 12 with respect to the § 102(e) rejection. (App. Br. 8-14.) Appellant also argues independent claim 6 with respect to the § 103(a) rejection. (App. Br. 15-16; Reply Br. 8-9.) Appellant states that dependent claim 2 (App. Br. 14), dependent claims 3 and 5 (App. Br. 16), and dependent claim 4 (App. Br. 17) stand or fall with independent claim 1. Appellant states that dependent claim 13 (App. Br. 15), dependent claims 14 and 16 (App. Br. 16), and dependent claim 15 (App. Br. 18) stand or fall with independent claim 12. Appellant does not separately argue dependent claims 7-11. (App. Br. 15-18.)

Thus, we address claims 1, 6, and 12, *infra*, and find that Appellant has waived arguments with respect to dependent claims 2-5, 7-11, and 13-16. In view of the Examiner's incorrect claim groupings, we find that dependent claims 7-11 stand or fall with independent base claim 6. (*See* notes 3 and 4, *supra*.) We address only those arguments that Appellant presents in the Briefs. Arguments that Appellant could have made but chose not to make in the Briefs are waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) ("Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.").

Appellant's Contentions⁵

Appellant contends that the Examiner improperly rejected claim 1 as anticipated by Martin because the Martin reference doesn't disclose assigning styles to portlets. (App. Br. 5-7.) Similarly, Appellant contends that the Examiner improperly rejected claim 12 as anticipated by Fukuda because the Fukuda reference doesn't disclose assigning styles to portlets. (App. Br. 10.) Appellant also contends that the Examiner has failed to present a prima facie obviousness rejection with respect to claims 6, 7, 10, 11, and 13 because the Examiner did not provide a sufficient rationale for combining the Fukuda and Gajewska references under § 103. (App. Br. 15-16; Reply Br. 8-9.)

Examiner's Findings and Conclusions

The Examiner finds that the prior art discloses and/or teaches each feature of Appellant's claims (Ans. 3-24), and maintains that each of the claims is properly rejected (Ans. 25-34). In particular, the Examiner finds

⁵ The Appellant makes numerous arguments related to office actions preceding the office action dated July 2, 2007 ("Last Office Action"), and references arguments made in response to the preceding office actions and Appellant's Appeal Brief filed February 28, 2007— *see, e.g.*, App. Br. 6, 9-14, 15-16. The Appellant currently appeals the Examiner's rejection of claims 1-16 in the Last Office Action. (App. Br. 1.) The rejections in the Last Office Action are the only rejections before the BPAI on appeal. As pointed out by the Examiner, the Last Office Action supersedes all previous office actions and Appellant's responses thereto. (Ans. 25.) Thus, the rejections made in the preceding office actions and any corresponding responses by Appellant are not before the BPAI, and we will not address any of Appellant's arguments related to office actions preceding the Last Office Action.

that both Martin (Ans. 4-5, 26-27) and Fukuda (Ans. 5-6, 27-29) disclose assigning styles to portlets. The Examiner also provides a rationale for combining Fukuda and Gajewski. (Ans. 11, 30-31.)

ISSUES

Based on Appellant's contentions, as well as the findings and conclusions of the Examiner, the pivotal issues before us are as follows.

1. Does Appellant establish that the Examiner erred in finding the Martin reference discloses assigning styles to portlets?
2. Does Appellant establish that the Examiner erred in finding the Fukuda reference discloses assigning styles to portlets?
3. Does Appellant establish that the Examiner failed to provide a sufficient rationale for combining the Fukuda and Gajewska references under § 103?

FINDINGS OF FACT (FF)

Martin Reference

1. Martin describes a communication system portal that provides access to a variety of applications and/or services, such as digital television systems. The portal presents a user navigable mosaic containing cells and pages. Each cell represents a virtual object and underlying application. When a user selects a cell, the underlying application is launched. (Col. 1, ll. 18-22; col. 1, l. 56 to col. 2, l. 18; Figs. 1A, 5A-5D.)
2. Martin describes user selectable (de-selectable) cells that gain and lose a user's focus. When a user selects or highlights a cell, the appearance of the cell changes, e.g., the cell is highlighted, a frame indicates

the currently selected cell, and/or text describing the underlying application may be displayed. (Col. 2, ll. 1-18; col. 3, ll. 19-63; Figs. 1A, 5A-5D.)

Specifically, Martin states that:

When a cell is selected (gains focus), the recorded program associated with the selected cell can be played back within the cell. When the currently selected cell is deselected (e.g., focus is gained by another cell), the playback of the recorded program within the now-deselected cell is stopped.

Using an input device (such as directional keys on a remote control or on a keypad of an STB), a user can position an indicator (e.g., a cursor, a highlight, a frame, etc.) to select one of cells 104. As cells gain/lose focus, the audio output by the television speaker(s) changes and the application or program description text is changed to correspond to the cell currently having focus. Pressing an "OK" or "Enter" key of the input device when the indicator is associated with a particular one of the cells launches the application underlying that cell. (Col. 3, ll. 36-40, 45-54.)

Fukuda Reference

3. Fukuda describes a television broadcast and service receiving system that receives television broadcasts and other services such as streaming video and audio data via a variety of media. The programs/services are displayed in a display including a multi-screen program and/or a Broadcast Markup Language (BML) carousel. The multi-screen program display includes multiple views of the streaming programs selectable by a user by moving a focus. (P. 1, ¶¶ [0001], [0006]-[0010]; p. 2, ¶¶ [0029], [0031], [0035]; p. 3, ¶ [0061]; pp. 3-4, [0064], [0065]; Figs. 3, 7.)

4. Fukuda describes user selectable (de-selectable) streaming programs that gain and lose a user's focus. Fukuda explains that the appearance of the program (frame) changes when a user moves the focus onto a program (frame). Fukuda uses a focus style, which is specified by a style sheet, to distinguish the program frame that is focused. (PP. 3-4, [0061], [0064]; Figs. 3, 7.) Specifically, Fukuda states that:

Streaming programs are represented by frames 702. Each of the streaming programs 702 has a program title 703 which is described in BML as characters. A streaming program selected by a user is distinguished using a focus 704, and the focus 704 can be shifted by using the cursor keys 202 of the remote control unit 116. A navigation index and focus style are used to clearly show which streaming program frame 702 is focused, and to precisely describe how the focus 704 moves The focus style is configured such that a style sheet is used to specify the style of the focus, thus allowing a user to distinctly know where the focus 704 is applied.

(P. 5, ¶ [0064].)

PRINCIPLES OF LAW

Burden on Appeal

The allocation of burden requires that the United States Patent and Trademark Office (USPTO) produce the factual basis for its rejection of an application under 35 U.S.C. §§ 102 and 103. *In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967)). The Examiner bears the initial burden of presenting a prima facie case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("[o]n appeal to the Board, an applicant can overcome a rejection by

showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

Anticipation

Anticipation is a question of fact. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). Under 35 U.S.C. § 102, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987) (citations omitted); *see also Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005)(citation omitted).

Obviousness

A claimed invention is not patentable if the subject matter of the claimed invention would have been obvious to a person having ordinary skill in the art. 35 U.S.C. § 103(a); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13 (1966). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art. *Graham*, 383 U.S. at 17. *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [Graham] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court emphasizes “the need for caution in granting a patent based on the combination of elements found in the prior

art,” and stated that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 550 U.S. at 415-16. The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 417. The operative question is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

ANALYSIS

Issue 1: Rejection of claim 1 under 35 U.S.C. § 102(e)

Martin describes a portal that presents a user navigable mosaic of user selectable (de-selectable) cells that gain and lose a user’s focus and change appearance accordingly, e.g., the cell is highlighted, a frame indicates the currently selected cell, and/or text describing the underlying application changes. (FF 1-2.) Martin explicitly describes that its “cells gain/lose focus,” that “a cell is selected (gains focus),” and that the “currently selected cell [may be] deselected (e.g., focus is gained by another cell).” (FF 2.) Thus, we find that an ordinarily-skilled artisan would have understood Martin to describe a system and method by which portal cells gain and lose

user focus, i.e., become focused and unfocused, and change appearance accordingly.

Appellant, however, contends that the Martin reference does not disclose assigning an unfocused style to unfocused portlets (App. Br. 5-6), nor a focused style to a focused portlet (App. Br. 6), nor re-assigning a focused style and an unfocused style when a new portlet acquires focus (App. Br. 6-7), i.e., “assigning styles to portlets, focused or not” (App. Br. 7).

The Examiner finds that Martin discloses assigning (re-assigning) styles to portlets. (Ans. 4-5, 26-27.)

Accordingly, we decide the question of whether the Martin reference discloses assigning styles to (focused and unfocused) portlets.

We determine the scope of the claims in patent applications not solely based on the claim language, but upon giving claims “their broadest reasonable interpretation consistent with the [S]pecification” and “in light of the [S]pecification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted).

Appellant explains that portlets “are the visible active components included as part of portal pages [E]ach portlet in a portal occupies a portion of the portal page through which the portlet can display associated content [And is] known to include . . . applications” (Spec, 1, 1. 16 to 2, 1. 3). Appellant does not explicitly define the terminology “assigning,” “focus,” or “style,” but does explain that:

The single portlet having the unique content rendering style can be the portlet which enjoys user input focus. Each portlet disposed within a portal can be configured to detect when the

portlet has acquired the user input focus. Upon acquiring focus, the portlet can call globally accessible logic for shifting the unique content rendering style from the portlet which previously had input focus, to the portlet which acquired the user input focus. Conversely, the portlet which previously had enjoyed user input focus can be re-rendered according to the content rendering style of the portlets which do not enjoy the user input focus.

(Spec. 8, ll. 6-13.)

In each case, the style can include any visual arrangement, such as the inclusion of a specialized icon within the view, the disposition of indicative text within the view (e.g. "FOCUSSED" and "UN-FOCUSSED"), or any other visual means.

When the user transitions focus from the first portlet application 130 to the second portlet application 140, for instance by "tabbing over" to the second portlet application 130, or by selecting the second portlet application 130 using a pointing device, the portal form 120 can be re-drawn

(Spec. 9, ll. 3-10.)

Thus, we interpret "assigning an unfocused style" to "unfocused portlets" to mean designating a first appearance (unfocused style) to unselected portions of a portal. We interpret "assigning a focused style" to a "focused portlet" to mean designating a second appearance (focused style) to a selected portion of a portal. And we interpret "re-assigning" focused and unfocused styles to newly focused or unfocused portlets to mean designating a first appearance to unselected portions of a portal and a second appearance to a selected portion of a portal. Accordingly, we broadly but reasonable interpret that assigning styles to focused and unfocused portlets means designating a first appearance to unselected portions of a portal and a second appearance to a selected portion of a portal. Such a broad construction is

particularly warranted in view of Appellant's disclosure that a style may include any visual arrangement and/or means.

After reviewing the record on appeal, we find the Martin reference discloses the disputed limitations. We agree with the Examiner that Martin teaches each of the recited features. We are not persuaded by Appellant's contrary arguments that Martin does not disclose the disputed features, and in particular is silent as to assigning styles to portlets.

Martin does not explicitly state that it assigns styles to portlets. However, as we explained *supra*, we find an ordinarily-skilled artisan would have understood Martin to describe a system and method by which portal cells – portlets – gain and lose user focus and change appearance in accordance with the focus – i.e., Martin designates a first appearance to unselected portions of a portal and a second appearance to a selected portion of a portal. With regard to the use of the terms “assigning,” “style,” “focused,” “unfocused,” and “portlet,” we are guided by *In re May*, 574 F.2d 1082, 1090 (CCPA 1978) (*citing In re Schaumann*, 572 F.2d 312, 317 (CCPA 1978) (“A reference does not fail as an anticipation merely because it does not contain a description of the subject matter of the appealed claim in ipsissimis verbis.”)) We also note that a prior art reference that achieves the same result in the same manner anticipates the disputed limitation. *See Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268-1269 (Fed. Cir. 1991) (“If, however, the disclosure is sufficient to show that the natural result flowing from the operation as taught would result in the performance of the questioned function, it seems to be well settled that the disclosure should be regarded as sufficient.”); *Tate Engineering, Inc. v. United States*, 477 F.2d 1336, 1342, (Ct. Cl. 1973) (“To anticipate, a prior art reference

must disclose each and every element of a claimed combination, or its equivalents, and the element must function in substantially the same way to produce substantially the same result.”).

For the foregoing reasons, Appellant has not persuaded us of error in the Examiner’s anticipation rejection of claim 1. Accordingly, we affirm the Examiner’s rejections of this claim.

Issue 2: Rejection of claim 12 under 35 U.S.C. § 102(e)

Fukuda describes system for receiving streaming programs that displays the streaming programs in a multi-screen program and/or a BML carousel. The user selects (focuses on) a streaming program by moving a focus (appearance) that distinguishes the selected streaming program frame. Fukuda uses a focus style, which is specified by a style sheet, to distinguish the program frame that is focused. (FF 3-4.) Thus, we find that an ordinarily-skilled artisan would have understood Fukuda to describe a system and method by which streaming program frames in a multi-screen program gain and lose user focus, i.e., become focused and unfocused, change appearance accordingly, and that the focused appearance is specified by a style sheet.

Appellant, however, contends that the Fukuda reference does not: (1) “illustrate portlets in a portal environment” (App. Br. 10); (2) disclose assigning a focused or an unfocused style sheet to portlets (App. Br. 9, 10); or (3) re-assigning a focused style sheet and an unfocused style sheet when a new portlet acquires focus (App. Br. 13-14).

The Examiner finds that Fukuda discloses assigning (re-assigning) style sheets to portlets. (Ans. 5-6, 27-29.)

Accordingly, we decide the question of whether the Fukuda reference discloses assigning style sheets to (focused and unfocused) portlets.

As we explained *supra* with respect to claim 1, we give claims “their broadest reasonable interpretation.” *Am. Acad. of Sci. Tech Ctr.*, 367 F.3d at 1364. Thus, we interpret “assigning an unfocused style sheet” to “unfocused portlets” to mean designating a first appearance (unfocused style) specified by a style sheet to unselected portions of a portal. We interpret “assigning a focused style sheet” to a “focused portlet” to mean designating a second appearance (focused style) specified by a style sheet to a selected portion of a portal. And we interpret “re-assigning” focused and unfocused style sheets to newly focused or unfocused portlets to mean designating a first appearance specified by a style sheet to unselected portions of a portal and a second appearance specified by a style sheet to a selected portion of a portal. To summarize, we broadly but reasonably interpret that assigning style sheets to focused and unfocused portlets means designating a first appearance specified by a style sheet to unselected portions of a portal and a second appearance specified by a style sheet to a selected portion of a portal.

After reviewing the record on appeal, we find the Fukuda reference discloses the disputed limitations. We agree with the Examiner that Fukuda teaches each of the recited features. We are not persuaded by Appellant’s contrary arguments that Fukuda does not disclose the disputed features, and in particular, assigning the unfocused style sheet to unfocused portlets.

Fukuda does not explicitly state that it assigns style sheets to portlets, or an unfocused style sheet to unfocused portlets. However, as we explained *supra*, we find an ordinarily-skilled artisan would have understood Fukuda to describe a system and method by which streaming program frames in a

multi-screen program gain and lose user focus, change appearance accordingly, and that the focused appearance is specified by a style sheet.

We find unavailing Appellant's argument that Fukuda's focus is not applied to the frames, but is instead a separate object. (App. Br. 12-13.) It is unclear how this argument distinguishes Fukuda from the disputed claim limitations. Fukuda describes that a streaming program is distinguished by the focus, which can be shifted by the user, and which is specified by a style sheet. (FF 4.) Therefore, the selected (focused) streaming program frame (portlet) has an appearance (style) designated by a style sheet – i.e., assigning a focused style sheet to a focused portlet. This focused appearance is distinguished (different) from the other streaming program frames (unfocused portlets). Thus, although not explicitly disclosed, Fukuda inherently discloses that the unselected (unfocused) streaming program frames (portlets) have a corresponding style/style sheet – i.e., an “unfocused style sheet.” This unselected/unfocused style (style sheet) is applied to the rest of the streaming program frames in the multi-screen program display.

As with claim 1, *supra*, we find that although Fukuda does not explicitly mention “assigning,” an “unfocused style sheet,” or “portlets,” these features are disclosed. *See May*, 574 F.2d at 1090; *Continental Can*, 948 F.2d at 1268-1269.

For the foregoing reasons, Appellant has not persuaded us of error in the Examiner's anticipation rejection of claim 12. Accordingly, we affirm the Examiner's rejections of this claim.

Issue 3: Rejection of claim 6 under 35 U.S.C. § 103(a)

Appellant contends that Examiner did not provide a sufficient rationale for combining the Fukuda and Gajewska references under § 103. (App. Br. 15-16; Reply Br. 8-9.) After reviewing the record on appeal, we agree with Appellant that the Examiner has not provided a sufficient rationale for combining Fukuda and Gajewska.

Although the Examiner articulates a rationale for combining the Fukuda and Gajewska references – that the teachings are from the same field of endeavor, both references teach focused and unfocused elements, and Gajewska teaches a focus list (a feature lacking in Fukuda) – this rationale merely reiterates the teachings of the references. This is not simply a situation of combining prior art elements according to known methods to achieve predictable results, a simple substitution of known elements, or the use of a known technique used to improved similar products. *See KSR*, 550 U.S. at 1741. Rather, Fukuda is directed to a receiver displaying a multi-screen program and/or a Broadcast Markup Language (BML) carousel, and Gajewska is directed to a Java™ platform implemented Focus List (Gajewska, ¶¶ [0012]-[0013], [0021], [0042]-[0044].) It is unclear from the Examiner's rationale why a technician of ordinary skill in this art would consult the particular reference documents or how the technician would use the teachings gleaned therefrom to incorporate the global indicator (Focus List) of Gajewska into the display system of Fukuda.

For the foregoing reasons, Appellant has persuaded us of error in the Examiner's obviousness rejection of independent claim 6 and dependent claims 7-11. Accordingly, we will not sustain the Examiner's rejections of these claims.

CONCLUSION OF LAW

On the record before us, we find that Appellant has not established that the Examiner erred in finding the Martin reference and the Fukuda reference disclose assigning styles to portlets.

On the record before us, we find that Appellant has established that the Examiner failed to provide a sufficient rationale for combining the Fukuda and Gajewska references under § 103.

DECISION

We affirm the Examiner's rejections of claims 1-5 and 12-16 under 35 U.S.C. § 102(e).

We reverse the Examiner's rejections of claims 6-11 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(iv).

AFFIRMED-IN-PART

erc

Carey, Rodriguez, Greenberg & Paul, LLP
Steven M. Greenberg
950 Peninsula Corporate Circle
Suite 3020
Boca Raton, FL 33487